

**ORDINANCE NO. 09-101**

ORDINANCE GRANTING A VARIANCE PERMIT TO ALLOW AN OVERSIZED ACCESSORY BUILDING WITH 430 SQUARE FEET IN TOTAL FLOOR AREA, WHERE A MAXIMUM OF 354 FEET IS ALLOWED, AND GRANTING AN ADJUSTMENT OF 14.4 FEET AS TO THE DISTANCE BETWEEN THE MAIN RESIDENCE AND THE OVERSIZED ACCESSORY BUILDING, WHERE 20 FEET ARE REQUIRED, CONTRA TO HIALEAH CODE §§ 98-502 AND 98-1666. **PROPERTY LOCATED AT 222 WEST 36 STREET, HIALEAH, FLORIDA.** REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the City Council of the City of Hialeah, Florida at its regular meeting of November 10, 2009, directed the Law Department to provide this ordinance overriding the Planning and Zoning Board's recommendation of denial at its meeting of October 28, 2009; and

**WHEREAS**, the petitioner proffers a declaration of restrictive covenants offering to demolish the bathroom, interior partitions, and closet in the accessory building, to remove all plumbing and all independent sources of electricity, to provide an interior opening of at least 6 feet to connect both areas in the accessory building and further representing that the demolition and legalization will be completed in 90 days, and that the accessory building will be used exclusively for storage and not as a dwelling unit, to which the City accepts.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

**Section 1:** The foregoing facts and recitations contained in the preamble to this ordinance are hereby adopted and incorporated by reference as if fully set forth herein.

**Section 2:** The below-described property is hereby granted a variance permit to allow an oversized accessory building with 430 square feet in total floor area, where a maximum of 354 square feet is allowed, and granting an adjustment of 14.4 feet as to the distance between the main residence and the oversized accessory building, where 20 feet are required, contra to Hialeah Code §§ 98-502 and 98-1666, which provide in pertinent part: “In the R-1 one-family district, every principal residential building shall provide a rear yard of a minimum depth of 20 feet to a rear lot line or front of accessory building” and “No accessory structure or building shall exceed 35 percent of the size of the main structure or building”. Property located at 222 West 36 Street, Hialeah, Miami-Dade County, Florida, zoned R-1 (One Family District), and legally described as follows:

THE EAST 5 FEET OF LOT 40 AND ALL OF LOT 41,  
IN BLOCK 4, OF CAROLE ANNE PARK, ACCORDING  
TO THE PLAT THEREOF, AS RECORDED IN PLAT  
BOOK 51, PAGE 101, OF THE PUBLIC RECORDS OF  
MIAMI-DADE COUNTY, FLORIDA.

**Section 3: Repeal of Ordinances in Conflict.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 4: Penalties.**

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the

city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

**Section 5: Severability Clause.**

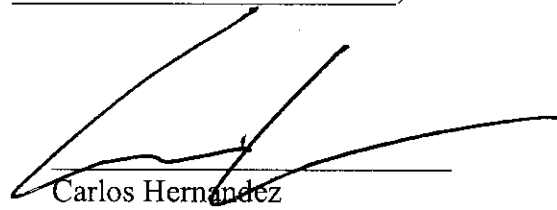
If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

**Section 6: Effective Date.**

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this 8th day of December, 2009.

THE FOREGOING ORDINANCE  
OF THE CITY OF HIALEAH WAS  
PUBLISHED IN ACCORDANCE  
WITH THE PROVISIONS OF  
FLORIDA STATUTE 166.041  
PRIOR TO FINAL READING.

  
Carlos Hernandez  
Council President

Attest:

Approved on this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Rafael E. Granado, City Clerk

**MAYOR'S SIGNATURE WITHHELD**

\_\_\_\_\_  
Mayor Julio Robaina

Approved as to form and legal sufficiency:

  
William M. Grodnick, City Attorney

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Ordinance was adopted by a 6-0 vote with Councilmembers, Caragol, Casals-Muñoz, Cue, Garcia-Martinez, Hernandez, Yedra voting "Yes", Councilmember Gonzalez absent.



CFN 2009R0913187  
OR Bk 27124 Pgs 4757 - 4761 (5pgs)  
RECORDED 12/22/2009 14:23:36  
HARVEY RUVIN, CLERK OF COURT  
MIAMI-DADE COUNTY, FLORIDA

**Prepared by and return to:**  
City of Hialeah  
Planning Division  
501 Palm Avenue, Second Floor  
Hialeah, FL 33010

**DECLARATION OF RESTRICTIVE COVENANTS  
(Individual)**

(I) (WE), Pacifica Homes, LLC

Being the owner(s) of lands described herein:

The street property address is: 222 West 36th Street, Hialeah, Florida.

The folio number is: 04-3106-036-1480

make the following Declaration of Restrictive covenants covering and running with the above property, specifying that this restriction during its lifetime shall be for the benefit of and a limitation upon all present and future owners of the real property described above, in favor of and enforceable by the City of Hialeah, Florida.

In connection therewith, the undersigned covenants, represents and agrees as follows:

1. That the Accessory building located at 222 West 36th Street, Hialeah, Florida will be exclusively used as storage and will not have any plumbing or an independent electrical meter. The bathroom, all interior partitions and closets inside the Accessory Building will be demolished. Interior load bearing wall will remain but an opening of no less than 6 feet will be provided to communicate the two spaces inside the Accessory Building. All demolitions and the legalization of the portion of the Accessory Building that was built without permits shall be completed within 90 days.
2. This covenant is intended and shall constitute a restrictive covenant concerning the use, enjoyment, and title to the above-described property and shall constitute a covenant running with the land and may be recorded in the Public Records of Miami-Dade County, Florida. This covenant shall remain in full force and effect and shall be binding upon the undersigned, its (their) heirs, successors and assigns until such time as the same is modified, amended or released and may only be modified, amended or released by a written instrument executed by the then owner having fee simple title to the property affected or to be affected by such modification, amendment, or release; provided, however, the same is also approved by the City Council and the Mayor of the City of Hialeah, or its successors, by resolution, upon advertised notice, or by ordinance if the covenant is adopted by ordinance or as otherwise provided in Hialeah Charter.
3. Where construction has occurred on said property described herein, pursuant to a permit issued by the City of Hialeah, and inspection made and approval of occupancy given by the City, the same shall create a conclusive presumption that the improvements thus constructed comply with the intent and spirit of the restrictions referenced herein and this Declaration of Restrictive Covenants shall not be construed as clouding title of any of said property on which such development has occurred.

DECLARATION OF RESTRICTIVE COVENANTS

(Individual)

IN WITNESS WHEREOF, (I) we have hereunto set out hands and seals at  
Miami Lakes, Florida this 8<sup>th</sup> day of December, 2009.  
(location)

Signed, sealed and delivered in the  
presence of:

Witness (2 Witnesses  
required)

Typed/Printed Name Alexander Vilanova

Witness

Typed/Printed Name Danielle K. Munoz

Witness (2 Witnesses  
required)

Typed/Printed Name \_\_\_\_\_

Pacifica Homes, LLC, Owner

Alexander Ruiz, Manager

Co-Owner

Co-Owner

Typed/Printed Name \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

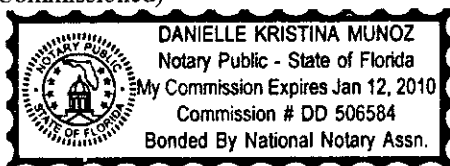
I HEREBY CERTIFY that on this 8 day of December 2009, before me, an officer duly  
authorized in the State of Florida and in County of Miami-Dade, to take acknowledgments, personally  
appeared Alexander Ruiz as Manager to me known to be the  
person(s) described herein and who executed the foregoing instrument, and he/she/they acknowledged before  
me, under oath, that he/she/they executed same.

WITNESS my hand and official seal this 8 day of December, 2009.

Notary Public, State of Florida

Danielle K. Munoz

(Name of Notary Public: Print, Stamp, or Type  
as Commissioned)



☒ Personally known to me, or  
☐ Produced identification:

Identification produced:

☐ Did take an oath  
☒ Did NOT take an oath

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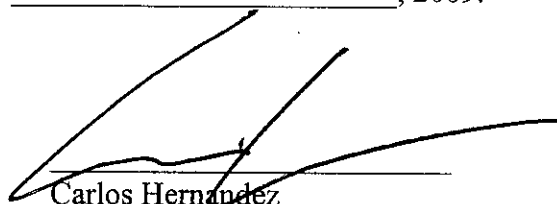
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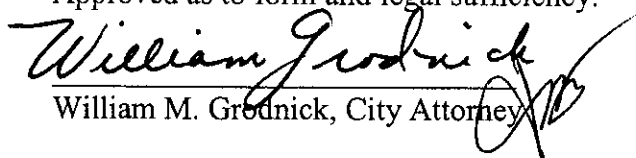
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\_\_\_\_\_  
Rafael E. Granado, City Clerk

**MAYOR'S SIGNATURE WITHHELD**  
\_\_\_\_\_  
Mayor Julio Robaina

Approved as to form and legal sufficiency:

  
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